



PATENT
Customer No. 22,852
Attorney Docket No. 04329.2620-01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
Hiroshi NOMURA et al.) Group Art Unit: 2851
Application No.: 10/657,251) Examiner: Alan A. MATHEWS
Filed: September 9, 2003)
For: EVALUATION MASK, FOCUS) Confirmation No.: 4036
MEASURING METHOD AND)
ABERRATION MEASURING)
METHOD)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

03/17/2005 SZEWDIE1 00000058 10657251

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TERMINAL DISCLAIMER

Assignee, KABUSHIKI KAISHA TOSHIBA, duly organized under the laws of JAPAN and having its principal place of business at 1-1, Shibaura 1-chome, Minato-ku, Tokyo, Japan, represents that it is the assignee of the entire right, title and interest in and to the above-identified application, a Continuation Application No. 10/657,251 (hereafter the "Continuation Application"), of parent Application No. 09/923,443 (hereafter the "parent Application"), filed August 8, 2001, incorporated by reference in the Continuation Application, filed September 9, 2003, for EVALUATION MASK, FOCUS MEASURING METHOD AND ABERRATION MEASURING METHOD, in the names of Hiroshi NOMURA and Kenji KONOMI, as indicated by assignments duly

recorded in the United States Patent and Trademark Office in the parent Application at Reel 012085, Frame 0690, on August 8, 2001. Assignee, KABUSHIKI KAISHA TOSHIBA, further represents that it is the assignee of the entire right, title and interest in and to the parent Application, issued as U.S. Patent No. 6,674,511, as indicated by assignments duly recorded in the United States Patent and Trademark Office (USPTO) at Reel 012085, Frame 0690, on the recordation date of August 8, 2001.

To obviate a double patenting rejection, assignee hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. §§ 154 to 156 and 173, as presently shortened by any terminal disclaimer, of prior patent No. 6,674,511, assignee hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, assignee does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. §§ 154 to 156 and 173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that the prior patent later expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or in part, is terminally disclaimed under 37 C.F.R. § 1.321, has all claims canceled by a reexamination

certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

In accordance with the fee schedule set forth in 37 C.F.R. § 1.20(d), the required fee of \$130.00 is being filed with this disclaimer.

If a check for the required fee is not filed concurrently herewith or if there are any additional fees due in connection with the filing of this Terminal Disclaimer, please charge the fees to our Deposit Account No. 06-0916. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to Deposit Account No. 06-0916

The undersigned is an attorney of record.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: March 15, 2005

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